

NTSB Order No. EA-4184

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 25th day of May, 1994

Respondent.

Docket SE-12498

91.130(c), 91.129(b) and (h), and 91.13(a).² As discussed below, respondent's appeal is denied and the initial decision is affirmed.

The Administrator alleged, and respondent admitted, that on October 15, 1991, he operated his Robinson R-22 helicopter into

² **§ 91.130 Airport radar service areas.**

(c) *Arrivals and overflights.* No person may operate an aircraft in an airport radar service area unless two-way radio communication is established with the ATC facility having jurisdiction over the airport radar service area prior to entering that area and is thereafter maintained with the ATC facility having jurisdiction over the airport radar service area while within that area.

§ 91.129 Operation at airports with operating control towers.

(b) *Communications with control towers operated by the United States.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower operated by the United States unless two-way radio communications are maintained between that aircraft and the control tower. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with 91.185.

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(h) *Clearances required.* No person may, at any airport with an operating control tower, operate an aircraft on a runway or taxiway, or takeoff or land an aircraft, unless an appropriate clearance is received from ATC. * * *

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

and within the Fort Wayne Airport Radar Service Area (ARSA) and Airport Traffic Area (ATA) without establishing and maintaining two-way radio communication with the appropriate air traffic control (ATC) facility, and that he landed at the Fort Wayne Airport without first receiving an ATC clearance. He has contended throughout this proceeding, however, that these actions were necessitated by an inflight emergency, and should be excused pursuant to 14 C.F.R. 91.3.³ Specifically, respondent claims that he had to land the helicopter because of a severe low frequency vibration in the main rotor which began when he was about 20 miles away from Fort Wayne, and that he was unable to communicate with ATC because of a radio problem (later determined to be caused by a short in his headset) which he noticed a short time thereafter.

Even though respondent was flying over open farmland when he first felt the alleged vibration, he stated that he continued flying an additional 20 miles to the Fort Wayne airport, rather than land on the farmland, because he was concerned about the possibility of hitting telephone wires. Respondent claims that the vibration was caused by two slightly cracked journals which were found on the main rotor during subsequent compliance with an unrelated Airworthiness Directive.⁴ (Exhibit R-3.) However, the

³ Section 91.3(b) states:

(b) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.

⁴ At the hearing respondent asserted his belief that the

mechanic who discovered the cracked journals indicated to the investigating inspector that they were so minor they would not have caused any vibration.

The order of suspension further alleged that respondent's subsequent flight, on the same day, from Fort Wayne to Wixom, Michigan was careless in light of the severe low frequency vibration in the main rotor he had experienced, because he failed to have this alleged condition repaired or inspected by a certificated mechanic prior to making the flight. At the hearing, counsel for the Administrator acknowledged that this charge assumed the truth of respondent's vibration story, and agreed that if the law judge found no such condition had existed (as he ultimately did), this charge would be rendered moot. (Tr. 63-68.) However, he argued that the elimination of this violation should have no effect on the requested sanction, noting that respondent had a record of a prior enforcement action (emergency revocation).

In his initial decision, the law judge rejected respondent's emergency defense, finding that respondent had presented insufficient evidence to establish the existence of a low frequency vibration, or of a radio problem. He cited respondent's failure to have a mechanic look at the helicopter at

(..continued)
vibration was caused by a combination of the cracked journals on the main rotor and an additional suspected problem with his tail rotor. However, he presented no evidence of any such tail rotor problem and, indeed, the mechanic who worked on respondent's helicopter after these flights told the investigating inspector that a vibration did indeed develop in the tail rotor, but only *after* it was painted during maintenance at his shop.

the Fort Wayne Airport after purportedly experiencing the vibration, a potentially serious condition,⁵ and his failure to mention any sort of vibration or radio problem to the mechanic who ultimately inspected his helicopter at his final destination in Wixom, Michigan.⁶ Indeed, respondent's only complaint upon reaching Wixom was that his Loran did not work.⁷ The law judge also held that, even assuming respondent had experienced a vibration as he described, this would not have excused his entry into the Fort Wayne airspace without attempting to contact the tower in some fashion.

In light of his finding that no vibration problem had existed the law judge confirmed, consistent with the Administrator's alternate theories of liability, that no violation had occurred on the second flight. He nonetheless

⁵ The Administrator's helicopter expert testified that a low frequency vibration is generally associated with a helicopter's main rotor and could indicate impending structural failure. He stated that it should be considered an emergency situation warranting an immediate landing, and that the aircraft should not be operated thereafter until it has been checked by a mechanic.

⁶ Although respondent claimed that he had told the mechanic at Wixom about his alleged vibration and radio problems, this testimony was contradicted by the mechanic's letter to the FAA investigating inspector. The law judge's rejection of respondent's testimony represents a credibility determination which we see no reason to disturb.

⁷ This would be consistent with respondent's inability to locate his destination airport at Wixom. The record indicates that he became lost on his way to Wixom and set his helicopter down at a gas station approximately eight miles from the airport. Another helicopter was ultimately sent to escort respondent to the proper location. (Exhibit A-1.) The Administrator suggested in closing argument that respondent's landing at Fort Wayne was also a result of his getting lost.

indicated his opinion that, assuming respondent had experienced a vibration problem as he described, his subsequent takeoff without further addressing that problem would have constituted reckless operation.

Regarding the alleged radio emergency, the law judge cited the lack of any evidence that any repair work was done, or that any check was made of the radios. The law judge further noted that even assuming respondent had experienced a short in his headset, as he claimed, he had made no attempt to follow appropriate procedures (spelled out in the Airman's Information Manual) for communicating with ATC when radios are inoperative.

On appeal respondent argues that the law judge's finding that he was "guilty" of taking off on the second flight without having the vibration checked by a mechanic proves that an inflight emergency existed on his first flight which justified his landing at Fort Wayne. This argument is premised on a misunderstanding of the initial decision. The law judge clearly did not find any regulatory violations in connection with respondent's second flight. (Tr. 80.) Although he opined that taking off after having experienced such a vibration would have been reckless operation, in light of his finding that no such vibration occurred, this was merely dictum. He made clear that his affirmance of the section 91.13(a) charge (the only one applicable to the second flight) was only residual to respondent's violations of section 91.130(c) and 91.129 on the first flight. (Tr. 82.) Accordingly, respondent's argument must

fail.

In sum, after evaluating the entire record in this case we find no error in the law judge's initial decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 150-day suspension of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.⁸

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁸ For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).